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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,724	11/16/2000	Franck Barilloud	AUS920000483US1	9479
35525	7590	02/12/2008		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER SWEARINGEN, JEFFREY R	
			ART UNIT 2145	PAPER NUMBER
			NOTIFICATION DATE 02/12/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeeiplaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/714,724	<b>Applicant(s)</b> BARILLOUD ET AL.	
	<b>Examiner</b> Jeffrey R. Swearingen	<b>Art Unit</b> 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,13,14,25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-12,15-24 and 27-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### DETAILED ACTION

1. This case has been reassigned to a new examiner.
2. In view of the pre-appeal brief filed on 9/6/2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 15-24 and 27-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 15-24 are directed toward means for performing various functions. The means presented in the specification are software *per se*. See figure 2. No hardware means are presented in the specification. Claims 27-36 are directed to a computer program product on a computer readable medium. Applicant broadened the definition of computer readable medium to include "transmission-type media, such as digital and analog communications links." Specification, page 10, lines 5-9. Transmission type media are not statutory subject matter. *In re Nuijten*.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 3-12, 15-24, 27-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Masters et al. (US 5,872,930).

7. In regard to claim 3, 15, 27, Masters disclosed:

*initializing one or more local service managers within the distributed data processing system, wherein each local service manager provides access to networked services for clients within the distributed data processing system, and wherein each client is uniquely associated with a local service manager; column 10, lines 59-67*

*initializing one or more distributed service managers within the distributed data processing system, wherein each distributed service manager provides access to networked services to local service managers within the distributed data processing system, and wherein each local service manager is uniquely associated with a distributed service manager; column 11, lines 1-14*

*receiving, at a distributed service manager, a request for a networked service from a local service manager; column 10, lines 59-67; column 11, line 61 – column 12, line 13*

*determining whether the distributed service manager has information about a networked service with one or more characteristics that match one or more parameters in the request for a networked service; and column 10, lines 59-67*

*returning information about a matched networked service from the distributed service manager to the local service manager. Column 10, lines 59-67*

8. In regard to claim 4, 16, 28, Masters disclosed:

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*sending a request for a networked service from a requesting client to a local service manager associated with the requesting client; and column 10, lines 59-67*

*returning information about a matching networked service from the local service manager to the requesting client, wherein the matching networked service has characteristics that match parameters in the request for a networked service. Column 10, lines 59-67; column 11, lines 26-33*

9. In regard to claim 5, 17, 29, Masters disclosed:

*receiving a request for a networked service at a local service manager; and column 11, lines 15-25*

*determining whether the local service manager has information about a networked service with characteristics that match parameters in the request for a networked service. Column 10, lines 59-67*

10. In regard to claim 6, 18, 30, Masters disclosed:

*if the local service manager has information about a matching networked service, returning the information about the matching networked service to the requesting client; column 11, lines 1-25*

*if the local service manager does not have information about a matching networked service, forwarding the request for a networked service from the local service manager to a distributed service manager associated with the local service manager.*

*Column 11, lines 1-25*

11. In regard to claim 7, 19, 31, Masters disclosed:

*if the distributed service manager has information about a matching networked service, returning the information about the matching networked service to the local service manager; column 10, lines 59-67; column 11, lines 26-33*

*if the distributed service manager does not have information about a matching networked service, broadcasting the request for a networked service from the distributed service manager to all distributed service managers in the distributed data processing system; column 11, lines 1-14, column 11, line 61 – column 12, line 34*

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*receiving information about one or more matching networked services at the distributed service manager in response to the broadcast request; and column 11, lines 26-33*

*caching the received information about one or more matching networked services at the distributed service manager. Column 11, lines 26-33*

12. In regard to claim 8, 20, 32, Masters disclosed:

*in response to a determination that the distributed service manager has information about two or more matching networked services, selecting a single networked service at the distributed service manager. Column 10, lines 59-67*

13. In regard to claim 9, 21, 33, Masters disclosed:

*performing a load balancing operation at the distributed service manager to select the single networked service. Column 12, lines 4-12*

14. In regard to claim 10, 22, 34, Masters disclosed:

*comparing network-related metrics during the load balancing operation. Column 12, lines 4-12*

15. In regard to claim 11, 23, 35, Masters disclosed:

*comparing one or more of network-related metrics associated with a network path between a requesting client and a providing server. Column 12, lines 35-58*

16. In regard to claim 12, 24, 36, Masters disclosed:

*the network-related metrics are selected from a group comprising: bottleneck-link speed, round-trip time, and hop count. Column 12, lines 35-58*

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen  
Examiner  
Art Unit 2145

JRS

/Jason D Cardone/  
Supervisory Patent Examiner, Art Unit 2145